

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SHERYL SATTERTHWAITE as)	
Executrix of the Estate of)	
DENNIS SATTERTHWAITE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05CV10606REK
)	
UNITED STATES OF AMERICA,)	
Et Al.)	
Defendants.)	
_____)	

**ANSWER OF THE DEFENDANT UNITED STATES OF AMERICA
TO THE FIRST AMENDED COMPLAINT**

The defendant, United States of America (“United States”), responds to the First Amended Complaint of the plaintiff, Sheryl Satterthwaite, Executrix of the Estate of Dennis Satterthwaite (“Plaintiff”), as follows:

FIRST AFFIRMATIVE DEFENSE

Answering the specific allegations of the First Amended Complaint, the United States

asserts: 1. The United States asserts that paragraph 1 is an alleged identification of Plaintiff and her residential address, to which no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the First Amended Complaint.

2. The United States asserts that paragraph 2 is an alleged identification of Plaintiff and her alleged executrix appointment, to which no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the

truth of the allegations contained in paragraph 2 of the First Amended Complaint. 3. Denied as written.

4. The United States asserts that the allegations contained in paragraph 4 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the First Amended Complaint.

5. The United States asserts that the allegations contained in paragraph 5 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the First Amended Complaint.

6. The United States asserts that the allegations contained in paragraph 6 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the First Amended Complaint.

7. The United States asserts that the allegations contained in paragraph 7 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the First Amended Complaint.

The Facts

8. The United States asserts that the allegations contained in paragraph 8 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the First Amended Complaint.

9. The United States asserts that the allegations contained in paragraph 9 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the First Amended Complaint.

10. The United States asserts that the allegations contained in paragraph 10 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the First Amended Complaint.

11. The United States admits only that the decedent was one of its patients and was treated by its agents, servants, and/or employees. The United States denies the remainder of the allegations contained in paragraph 11 of the First Amended Complaint. Further, paragraph 11 states a legal conclusion to which no response is required. To the extent that a response is required, the United States denies the allegations contained in paragraph 11.

12. The United States lacks knowledge and information sufficient to form a belief as to

the truth of the allegations contained in paragraph 12 of the First Amended Complaint. To the extent a response is required, the United States denies the allegations contained in paragraph 12.

13. The United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the First Amended Complaint.

14. The United States admits only that Plaintiff filed an administrative claim. The remainder of paragraph 14 states a legal conclusion to which no response is required. To the extent that a response is required, the United States denies the allegations contained in paragraph 14.

15. The United States admits only that Plaintiff's administrative claim was denied in writing. The remainder of paragraph 15 states a legal conclusion to which no response is required. To the extent that a response is required, the United States denies the allegations contained in paragraph 15.

Causes of Action

First Cause of Action

16. The United States asserts that the allegations contained in paragraph 16 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the First Amended Complaint.

Second Cause of Action

17. The United States asserts that the allegations contained in paragraph 17 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no

response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the First Amended Complaint.

Third Cause of Action

18. The United States asserts that the allegations contained in paragraph 18 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the First Amended Complaint.

Fourth Cause of Action

19. The United States asserts that the allegations contained in paragraph 19 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the First Amended Complaint.

Fifth Cause of Action

20. The United States asserts that the allegations contained in paragraph 20 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the First Amended Complaint.

Sixth Cause of Action

21. The United States asserts that the allegations contained in paragraph 21 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the First Amended Complaint.

Seventh Cause of Action

22. The United States asserts that the allegations contained in paragraph 22 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the First Amended Complaint.

Eighth Cause of Action

23. The United States asserts that the allegations contained in paragraph 23 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the First Amended Complaint.

Ninth Cause of Action

24. The United States asserts that the allegations contained in paragraph 24 of the First Amended Complaint concern a co-defendant, and do not concern the United States. As such, no response is required. To the extent a response is required, the United States lacks knowledge and

information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the First Amended Complaint.

Tenth Cause of Action

25. Denied. Further, the allegations contained in paragraph 25 of the First Amended Complaint merely summarize and characterize the nature of Plaintiff's allegations against the United States, to which no response is required. To the extent a response is required, the United States denies the allegations contained therein. Moreover, paragraph 25 states a legal conclusion to which no response is required. To the extent that a response is required, the United States denies the allegations contained in paragraph 25.

Eleventh Cause of Action

26. Denied. Further, the allegations contained in paragraph 26 of the First Amended Complaint merely summarize and characterize the nature of Plaintiff's allegations against the United States, to which no response is required. To the extent a response is required, the United States denies the allegations contained therein. Moreover, paragraph 26 states a legal conclusion to which no response is required. To the extent that a response is required, the United States denies the allegations contained in paragraph 26.

Demands for Relief

27-32. Paragraphs 27 through and including 32 of the First Amended Complaint, under the heading "Demands for Relief," concern co-defendants, and do not concern the United States. As such, no response is required. Further, paragraphs 27 through 32 constitute Plaintiff's prayers for relief, to which no response is required. To the extent a response is required, the United States denies the allegations contained therein.

33. Paragraph 33 of the First Amended Complaint, under the heading “Demands for Relief,” constitutes Plaintiff’s prayers for relief, to which no response is required. To the extent a response is required, the United States denies the allegations contained therein.

Jury Claim

34. Paragraph 34 of the First Amended Complaint, under the heading “Jury Claim,” constitutes Plaintiff’s demand for jury trial, to which no response is required. To the extent a response is required, the United States denies the allegations contained therein. Further, the United States asserts that Plaintiff is not entitled to a jury trial as to any claim against the United States pursuant to 28 U.S.C. § 2402.

SECOND AFFIRMATIVE DEFENSE

And further answering, the United States asserts that Plaintiff’s First Amended Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

And further answering, the United States asserts that Plaintiff is not entitled to a jury trial as to any claim against the United States. 28 U.S.C. § 2402.

FOURTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that attorney’s fees are taken out of any judgment or settlement and are governed by statute. 28 U.S.C. § 2678.

FIFTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that it is not liable for prejudgment interest. 28 U.S.C. § 2674.

SIXTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that Plaintiff is limited to the damages amount set out in her administrative claim. 28 U.S.C. § 2675(b).

SEVENTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that the injuries claimed by Plaintiff's decedent (Dennis Satterthwaite) were caused by others over whom this defendant has no control, or were the result of a disease process over which the United States had no control, and not by any negligent act or omission of the United States.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that the injuries and/or damages alleged in the First Amended Complaint were proximately caused by the act or omission of persons other than the United States, or its agents, servants, or employees.

NINTH AFFIRMATIVE DEFENSE

And further answering, the United States asserts that Plaintiff cannot recover in accordance with Mass. Gen. L. ch. 231 § 85 because of the actions or inactions of Plaintiff's decedent.

Respectfully submitted,

UNITED STATES OF AMERICA,
By its attorney,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Gina Y. Walcott-Torres

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